

## § 240.15b9-2

purchases and sales of securities otherwise than on a national securities exchange of which it is a member in an amount no greater than \$1,000.

(b) The gross income limitation contained in paragraph (a) of this section, shall not apply to income derived from transactions (1) for the dealer's own account with or through another registered broker or dealer or (2) through the Intermarket Trading System.

(c) For purposes of this section, the term *Intermarket Trading System* shall mean the intermarket communications linkage operated jointly by certain self-regulatory organizations pursuant to a plan filed with, and approved by, the Commission pursuant to § 242.608 of this chapter.

[48 FR 53691, Nov. 29, 1983, as amended at 70 FR 37618, June 29, 2005]

## § 240.15b9-2 Exemption from SRO membership for OTC derivatives dealers.

An OTC derivatives dealer, as defined in § 240.3b-12, shall be exempt from any requirement under section 15(b)(8) of the Act (15 U.S.C. 78o(b)(8)) to become a member of a registered national securities association.

[63 FR 59397, Nov. 3, 1998]

## § 240.15b11-1 Registration by notice of security futures product broker-dealers.

(a) A broker or dealer may register by notice pursuant to section 15(b)(11)(A) of the Act (15 U.S.C. 78o(b)(11)(A)) if it:

(1) Is registered with the Commodity Futures Trading Commission as a futures commission merchant or an introducing broker, as those terms are defined in the Commodity Exchange Act (7 U.S.C. 1, et seq.), respectively;

(2) Is a member of the National Futures Association or another national securities association registered under section 15A(k) of the Act (15 U.S.C. 78o-3(k)); and

(3) Is not required to register as a broker or dealer in connection with transactions in securities other than security futures products.

(b) A broker or dealer registering by notice pursuant to section 15(b)(11)(A) of the Act (15 U.S.C. 78o(b)(11)(A)) must file Form BD-N (17 CFR 249.501b) in ac-

## 17 CFR Ch. II (4-1-12 Edition)

cordance with the instructions to the form. A broker or dealer registering by notice pursuant to this section must indicate where appropriate on Form BD-N that it satisfies all of the conditions in paragraph (a) of this section.

(c) If the information contained in any notice of registration filed on Form BD-N (17 CFR 249.501b) pursuant to this section is or becomes inaccurate for any reason, the broker or dealer shall promptly file an amendment on Form BD-N correcting such information.

(d) An application for registration by notice, and any amendments thereto, that are filed on Form BD-N (17 CFR 249.501b) pursuant to this section will be considered a "report" filed with the Commission for purposes of sections 15(b), 17(a), 18(a), 32(a) (15 U.S.C. 78o(b), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Act.

[66 FR 45146, Aug. 27, 2001]

## § 240.15b12-1T Brokers or dealers engaged in a retail forex business.

(a) *Definitions.* In addition to the definitions in this section, the following terms have the same meaning as in the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.): "broker," "dealer," "person," "registered broker or dealer," and "self-regulatory organization."

(1) *Act* means the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

(2) *Retail forex business* means engaging in one or more retail forex transactions with the intent to derive income from those transactions, either directly or indirectly.

(3) *Retail forex transaction* means any account, agreement, contract or transaction in foreign currency that is offered or entered into by a broker or dealer with a person that is not an eligible contract participant as defined in section 1a(18) of the Commodity Exchange Act (7 U.S.C. 1a(18)) and that is:

(i) A contract of sale of a commodity for future delivery or an option on such a contract;

(ii) An option, other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78(f)(a)); or

## Securities and Exchange Commission

## § 240.15c1-1

(iii) Offered, or entered into, on a leveraged or margined basis, or financed by a broker or dealer or any person acting in concert with the broker or dealer on a similar basis, other than:

(A) A security that is not a security futures product as defined in section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)); or

(B) A contract of sale that:

(1) Results in actual delivery within two days; or

(2) Creates an enforceable obligation to deliver between a seller and buyer that have the ability to deliver and accept delivery, respectively, in connection with their line of business.

(b) Any registered broker or dealer may engage in a retail forex business provided that such broker or dealer complies with the Act, the rules and regulations thereunder, and the rules of the self-regulatory organization(s) of which the broker or dealer is a member, including, but not limited to, the disclosure, recordkeeping, capital and margin, reporting, business conduct, and documentation requirements, insofar as they are applicable to retail forex transactions.

(c) Any registered broker or dealer that is engaged in a retail forex business in compliance with paragraph (b) of this section on or after the effective date of this section shall be deemed, until the date specified in paragraph (d) of this section, to be acting pursuant to a rule or regulation described in section 2(c)(2)(E)(ii)(I) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(E)(ii)(I)).

(d) This section will expire and no longer be effective on July 16, 2012.

[76 FR 41685, July 15, 2011]

EFFECTIVE DATE NOTE: At 76 FR 41685, July 15, 2011, § 240.15b12-1T was added, effective July 15, 2011 through July 16, 2012.

### RULES RELATING TO OVER-THE-COUNTER MARKETS

#### § 240.15c1-1 Definitions.

As used in any rule adopted pursuant to section 15(c)(1) of the Act:

(a) The term *customer* shall not include a broker or dealer or a municipal securities dealer; provided, however, that the term “customer” shall include a municipal securities dealer (other

than a broker or dealer) with respect to transactions in securities other than municipal securities.

(b) The term *the completion of the transaction* means:

(1) In the case of a customer who purchases a security through or from a broker, dealer or municipal securities dealer, except as provided in paragraph (b)(2) of this section, the time when such customer pays the broker, dealer or municipal securities dealer any part of the purchase price, or, if payment is effected by a bookkeeping entry, the time when such bookkeeping entry is made by the broker, dealer or municipal securities dealer for any part of the purchase price;

(2) In the case of a customer who purchases a security through or from a broker, dealer or municipal securities dealer and who makes payment therefor prior to the time when payment is requested or notification is given that payment is due, the time when such broker, dealer or municipal securities dealer delivers the security to or into the account of such customer;

(3) In the case of a customer who sells a security through or to a broker, dealer or municipal securities dealer except as provided in paragraph (b)(4) of this section, if the security is not in the custody of the broker, dealer or municipal securities dealer at the time of sale, the time when the security is delivered to the broker, dealer or municipal securities dealer, and if the security is in the custody of the broker, dealer or municipal securities dealer at the time of sale, the time when the broker, dealer or municipal securities dealer transfers the security from the account of such customer;

(4) In the case of a customer who sells a security through or to a broker, dealer or municipal securities dealer and who delivers such security to such broker, dealer or municipal securities dealer prior to the time when delivery is requested or notification is given that delivery is due, the time when such broker, dealer or municipal securities dealer makes payment to or into the account of such customer.

[41 FR 22825, June 7, 1976]